

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

OCT 31 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2008-0083
)	DEPARTMENT B
)	
IN RE GADN R.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17919701

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Julie Levitt-Guren

Tucson
Attorneys for Minor

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Gadn R. was adjudicated delinquent, and the juvenile court placed him on probation. After Gadn admitted certain allegations in the state's petition to revoke probation, the court terminated probation, designating it as unsuccessful. Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967); *State v. Leon*, 104 Ariz. 297,

451 P.2d 878 (1969); and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). *See also In re Maricopa County Juv. Action No. JV-117258*, 163 Ariz. 484, 487, 788 P.2d 1235, 1238 (App. 1989) (holding juveniles adjudicated delinquent have constitutional right to *Anders* appeal).

¶2 Counsel suggests this court consider as an arguable issue whether the juvenile court abused its discretion by terminating Gadn’s probation as unsuccessful “rather than neutrally.” It is “within the [juvenile] court’s authority pursuant to Rule 31(D), Ariz. R. P. Juv. Ct.,” to terminate a juvenile’s probation and designate that termination unsuccessful. *In re Themika M.*, 206 Ariz. 553, ¶ 6, 81 P.3d 344, 345 (App. 2003). As with all disposition orders, we will not disturb the juvenile court’s ruling absent an abuse of discretion. *See id.* ¶ 5. We see no abuse of discretion here.

¶3 The record before us establishes that now-seventeen-year-old Gadn has a history of failing to comply with the terms of probation. He was adjudicated delinquent in June 2007 after admitting charges of attempted unlawful use of a means of transportation and assault (domestic violence). He was subsequently placed on probation. Days after he admitted those offenses, he was charged with criminal damage and again adjudicated delinquent. In October 2007, the state filed a petition to revoke probation, and Gadn admitted having violated conditions of his probation. The juvenile court continued him on probation in November 2007. In July 2008, the state filed another petition to revoke probation, alleging Gadn had again violated the conditions of his probation. Gadn admitted

four of the allegations: he had failed to contact his probation officer, violated curfew numerous times, failed to submit to weekly drug testing, and been terminated from the Community Support Program in June 2008.

¶4 The prosecutor noted Gadn's history at the disposition hearing, pointing out that he had been offered a panoply of services. The prosecutor stated that Gadn had been uncooperative and his conduct demonstrated he had failed to change his "attitude." The prosecutor added, "So I do agree with [the] probation [officer]. I think it's time to close this case[,] and I think he certainly has deserved an unsuccessful termination" Gadn's counsel urged the court not to terminate probation unsuccessfully. She noted Gadn was aware he was subject to "severe mood swings" and suggested perhaps he was not receiving proper treatment or medication. She added that Gadn preferred to be hospitalized so he could be treated. Counsel suggested the court "wait a few months and see how it goes" before characterizing the termination as unsuccessful.

¶5 The court considered Gadn's history, the various recommendations that had been made, and the applicable guidelines for commitment to the Arizona Department of Juvenile Corrections. The court also considered Gadn's own statements to the court. It found Gadn did not "meet the criteria for commitment" and chose to "accept the recommendation of probation and . . . terminate him from probation on an unsuccessful basis." In light of the record, we have no basis for finding the court abused its discretion in doing so.

¶6 We summarily reject the second arguable issue counsel raises, which challenges the juvenile court’s decision to allow Child Protective Services, which took custody of Gadn, to send him to Canyon State Academy pending resolution of dependency proceedings. As counsel acknowledges, the dependency matter was unrelated to the revocation of Gadn’s probation in this delinquency proceeding. Rather, the court placed Gadn at Canyon State Academy pursuant to the court’s authority in child dependency proceedings. We may not consider the propriety of that placement in the context of this appeal.

¶7 As requested, we have reviewed the record for fundamental, reversible error. Finding none, we affirm the juvenile court’s order terminating Gadn’s probation as unsuccessful.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge